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Summary record of the first part (public)* of the 1310th meeting
Held at the Palais Wilson, Geneva, on Monday, 4 May 2015, at 10 a.m.

Chairperson: Mr. Tugushi (Vice-Chairperson)

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.1310/Add.1.

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In the absence of the Chairperson, Mr. Tugushi (Vice-Chairperson) took the Chair.

The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Third periodic report of the former Yugoslav Republic of Macedonia (CAT/C/MKD/3; CAT/C/MKD/Q/3; HRI/CORE/MKD/2013)

1. *At the invitation of the Chairperson, the delegation of the former Yugoslav Republic of Macedonia took places at the Committee table.*

2. **Mr. Ristovski** (The former Yugoslav Republic of Macedonia) said that strengthening the independence of the judiciary was a priority for his Government. Constitutional amendments were therefore under consideration to exclude the Minister of Justice and the President of the Supreme Court, who were currently serving as ex officio members, from the Judicial Council, and to raise the number of judges who sat on the Council. Other proposed amendments included introducing a mechanism to facilitate citizens' complaints against the violation by the authorities of rights under the Constitution.

3. Considerable funding had been earmarked for the implementation of the new Law on Criminal Procedure of December 2013, which would help to build the capacity of the Public Prosecutor's Office. Audiovisual equipment to record investigative proceedings of public prosecutors' offices had been procured as part of a project funded by the European Union under its instrument for pre-accession assistance (IPA). Extensive training on the application of the Law had also been provided to judges, public prosecutors, police detectives and lawyers. In addition, a manual had been published to introduce police officers and authorities involved in pretrial proceedings to the new provisions under the Law.

4. The Government was strongly committed to reform of the prison system and was focusing in particular on reducing overcrowding, building new facilities or upgrading existing ones and improving the treatment and rehabilitation of prisoners. It was implementing IPA projects to promote a Probation Service and the use of non-custodial sentences as alternatives to prison.

5. There were plans to introduce an independent external monitoring mechanism to ensure that the Ministry of the Interior demonstrated full respect for human rights, particularly while exercising police powers. Under the new law on the police, the weapons of police officers who were reported to the centres for social work as perpetrators of domestic violence were confiscated. Furthermore, perpetrators of domestic violence must undergo psychological treatment or counselling. An internal control section, the Sector for Internal Control and Professional Standards, had been put in place at the Ministry to monitor the work of police officers whenever cases of torture were reported. Another IPA project involved refurbishing a reception centre for foreigners. The Ministry had also initiated a project to build a new centre for foreigners in 2016, which would fully meet international standards.

6. Turning to judgements of the European Court of Human Rights involving the violation of article 3 of the European Convention on Human Rights, including *Jasar v. the former Yugoslav Republic of Macedonia*, he said that the authorities had taken comprehensive steps to prevent the recurrence of similar violations. The penalties for offences involving such violations were increased from a maximum of 5 years to a maximum of 8 years of imprisonment.

7. Amendments to legislation on the Ombudsman were aimed at bringing the national human rights institution into line with the Paris Principles. A new law on domestic violence

had been passed in 2014, the first of its kind in the country, which provided for a comprehensive and coordinated system for the prevention of such violence. The necessary training had been provided to professionals from social work centres and teams for the prevention of domestic violence composed of representatives of the centres, the Ministry of the Interior, health-care institutions and citizen's associations had been established. The national strategy on mental health sought to shift mental health care away from hospitals and to improve conditions in the psychiatric hospitals throughout the country.

8. Lastly, the Government had established an intersectoral body chaired by the Minister for Foreign Affairs, which coordinated the human rights work of all relevant ministries and government bodies with United Nations treaty bodies and other international organizations and presented proposals to improve human rights legislation in the Republic of Macedonia.

9. **Ms. Gaer** (Country Rapporteur) said that she welcomed the robust delegation with representatives from so many different ministries and the detailed report submitted under the new simplified reporting procedure. She commended the accession of the former Yugoslav Republic of Macedonia to the Optional Protocol, the establishment of the Ombudsman's Office, which was acting as the national preventive mechanism, and the regular visits received from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

10. While the Ombudsman had issued a number of interesting reports, various sources had expressed concerns over the effectiveness of the institution as a preventive mechanism. The delegation should provide a list of the Ombudsman's recommendations that had been implemented, as the Committee had been informed that most had not been carried out and that there was no formal procedure for them to be processed. There continued to be allegations of beatings of persons in detention by guards, overcrowding, unsafe and unhygienic conditions and poor maintenance of facilities.

11. There were continued reports of domestic violence and the lack of adequate funding to carry out action plans to end it. The Committee had also received reports of violence against the Roma, including an incident in May 2013 in Skopje involving some 50 police officers and the Alpha special police unit, who had allegedly used excessive force, injuring 10 people, including 3 women. She wished to know whether the incident had been investigated and whether anyone had been prosecuted. The lesbian, gay, bisexual and transgender (LGBT) community continued to be the target of hate crimes according to a number of reports. She asked what the Government had done to prevent violence against the community and protect the human rights defenders who acted on its behalf. There was a need for further statistical data on such violence, without which it was hard to assess the status of implementation of the Committee's recommendations.

12. Concerns had been raised over the current mass wiretapping scandal involving a series of alleged wiretapped conversations between the Prime Minister, the head of the secret service and other officials, in which they reportedly discussed the appointment of a judge, raising serious questions about political fairness. She wished to know what was being done to uphold the rule of law and independence of the judiciary.

13. Turning to the list of issues prior to reporting, she wished to know whether the definition of torture set out under article 142 of the Criminal Code covered the police, army and prosecutors. It was not clear what was meant by "official persons" and "person performing his duty". The delegation should state whether article 143 of the Code included persons who consented to or acquiesced in acts of torture or covered only the physical performance of such acts. As the Helsinki Committee for Human Rights of the Republic of Macedonia had noted in its report, not a single person had been pronounced guilty of

torture since the introduction of the amendments to the Code, while only a handful of persons had been found guilty of abuse. Was that information correct?

14. Further clarification was needed of the scope of the Law on Amnesty, in particular concerning the information provided in paragraph 10 of the periodic report that the Public Prosecutor's Office had "renounced" further prosecution in the four cases against persons who had been prosecuted for crimes related to the 2001 conflict. She would appreciate an update on the status of the cases, which had been before the International Criminal Tribunal for the Former Yugoslavia, including the National Liberation Army (NLA) leadership case. She wondered whether the Tribunal had been informed that they had been dropped. She would also appreciate information on the allegations of the abduction of 12 ethnic Macedonians and 1 Bulgarian national by the National Liberation Army and 6 ethnic Albanians believed to be the victims of enforced disappearance during the armed conflict.

15. Referring to the figures cited in paragraph 11 of the periodic report, she asked why the number of convictions for the crime of mistreatment had been so low, with no cases reported in 2011 and 2012. She wished to know whether the few officials who had been convicted were still currently serving in the prison system.

16. Turning to the issue of the lack of an independent and external oversight mechanism to monitor police conduct, she would be grateful if the delegation could comment on a United States State Department report that the Sector for Internal Control and Professional Standards of the Ministry of the Interior had pressed charges against only 1 officer while there had been 46 complaints, which was attributed to the public prosecutor's shared "solidarity with police officers". The delegation should also comment on the report by the European Committee that the Sector did not have a dissuasive effect on the actions of the police and that it lacked independence.

17. She asked what measures were being taken to ensure that the recommendations of the Ombudsman were legally binding and that the Office was adequately funded. As the information provided by the Ombudsman suggested that there had been an increase in the number of complaints, she wondered what had been done to address them. Lastly, further details were needed of the case referred to in the report of the Helsinki Committee and the Ombudsman involving a prisoner who had allegedly sustained such severe injuries caused by a prison guard in Skopje that a kidney and the spleen had had to be surgically removed. The officer reportedly had been sentenced to a prison term of 18 months. The delegation should comment on reports that the prison guard had remained in his post while appealing against the sentence and state whether he was still working as a prison guard at the present time. She also wondered whether the victim had received any redress.

18. **Mr. Domah** (Country Rapporteur) said that the constitutional complaints mechanism mentioned by the delegation was too timid. He would prefer to see a Constitutional Court that was vested with the power to hear complaints from citizens of violations of the rights guaranteed under the Convention. He wondered why the State party had been so reluctant to act on the recommendation of the Committee in its previous concluding observations that training programmes should be introduced for medical personnel for the identification and documentation of cases of torture and rehabilitation of victims. He also wondered whether the provisions under article 10 of the Convention regarding the prohibition against torture were fully included in the training of law enforcement personnel, medical personnel and other persons involved in the treatment of persons subject to arrest, detention or imprisonment.

19. There had been reports of the executive and judicial branches of government colluding to protect perpetrators of acts of torture. In its 2008 concluding observations, the Committee had noted that the "Alfi" special police unit was going to terminate its activities. The continued existence of that body, albeit under a different name, suggested that the

Government was not properly fulfilling its obligations under the Convention. The national authorities had failed to investigate a number of serious complaints relating to the activities of that unit, including the harassment of an opposition party politician and the extraction, under duress, of confessions from unaccompanied Roma children.

20. With reference to article 14, he asked for information on measures taken to raise public awareness of the right to file complaints of torture and ill-treatment against law enforcement officials, compensation awarded to victims of police violence and plans to carry out prompt, impartial and independent investigations into all allegations of torture and to provide victims with due reparation. He asked what the outcome of the publication of a number of European Court of Human Rights judgements relating to breaches of the Convention for the Protection of Human Rights and Fundamental Freedoms by the State party had been and whether the victims in question had received compensation.

21. Turning to article 15, he asked for assurances that domestic legislation prohibiting the admittance of evidence obtained through torture was fully and systematically applied and asked how many convictions had been secured through guilty pleas. Referring to article 16, he said that the sanctions for law enforcement officials guilty of the torture or ill-treatment of detainees were too lenient, and asked for examples of official regulations prohibiting such conduct.

22. The poor conditions in which pretrial detainees were held in the State party were linked to overcrowding. Detainees were sometimes denied access to medical care. The number of complaints made to the Helsinki Committee for Human Rights had increased but nothing had been done to address the concerns expressed by that body, which had been prevented from carrying out prison visits since 2012. The Committee had received complaints relating to the failure of the authorities to provide detainees with safe drinking water and basic necessities. He asked for information on the death of a seriously ill detainee, who had been transferred to Idrizovo prison following a breach of medical confidentiality in another penitentiary establishment.

23. The national authorities had detained many irregular migrants simply in order to gather evidence against traffickers in persons. Unaccompanied child migrants were not afforded special treatment when detained and no distinction was made between migrant workers and asylum seekers. He expressed the hope that the State party would not use the issue of national security as grounds for the expulsion of asylum seekers. There had been reports that inmates at the Gazi Baba Reception Centre for Foreigners were being held in appalling conditions for periods of one to six months. Many migrants were taken back to the border or returned to third countries without having had access to a proper adjudication system. He asked whether the State party intended to set up a humane protection mechanism in that regard.

24. He asked whether reports that there had been an attempt to cover up the persistent sexual abuse of minors held for long periods of time at the Tetovo Educational and Correctional Institution were true. There had also been reports of unaccompanied minors being taken directly from immigration posts to the Gazi Baba Reception Centre for Foreigners.

25. Lastly, he asked what steps had been taken to ensure that measures to combat domestic violence were results-based and effective and whether a strategy had been developed to achieve the relevant goals through coordination and a comprehensive approach. A number of women had died as a result of domestic violence in 2014 and 2015. The perpetrators had been known to the authorities as habitual reoffenders and those cases would not have occurred if the State party had acted to tackle the issue. The lax attitude of the authorities discouraged victims of domestic violence from stepping forward.

Specialized training on domestic violence must be provided to social workers, medical doctors and judicial and investigative officials.

26. **Mr. Bruni** asked whether media reports that 1,600 detainees were being held at Idrizovo prison (a facility with a capacity of 800 prisoners) were true. He asked why, despite the efforts of the State party to improve the situation and the significant funding provided by the Council of Europe Development Bank, conditions of detention at that facility remained poor and when work to renovate the prison would be completed.

27. Turning to the issue of detention facilities in police stations, he asked what the impact of the recommendations made by the Ombudsman's Office following its visits to such units had been and whether the recommendations were implemented. According to the Ombudsman's Office, despite Kumanovo police station having been earmarked for renovation, there had been no improvement in conditions of detention at that location. He asked whether the State party's plans to renovate and rebuild places of deprivation of liberty covered detention facilities located in police stations and, if so, what did the national authorities intend to do to improve the situation at those facilities?

28. **Mr. Zhang** asked for information regarding training on human rights instruments for military officials. He also asked for clarification of the term "means of coercion" employed in the State party's report (CAT/C/MKD/3) in the context of police training and requested information on specific cases in which the domestic courts had ruled out the use of evidence obtained through torture.

29. **Mr. Modvig** (Follow-up Rapporteur) asked for information on the number of cases of torture registered with the Public Prosecutor's Office and on the participation of doctors in prison visits of the national preventive mechanism. With reference to article 10, he asked how and when the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) would be implemented. He also asked whether the State party intended to transfer responsibility for the prison health-care system to the Ministry of Health, why the number of detainees and pretrial detainees had increased dramatically since 2000 and when the non-custodial measures implemented by the national authorities would start to have an impact on overcrowding in detention facilities.

30. **Ms. Pradhan-Malla** asked how Parliament and the judiciary would be informed of the Committee's concerns, how many women's prisons had been set up and how the specific needs of women detainees were catered for. She requested clarification relating to conflicting data on the number of cases of domestic violence against women and information on how the quality of protection had been improved. She asked whether the Criminal Code covered all forms of violence against women (in particular, sexual, domestic and psychological violence). She asked for information on public awareness campaigns to encourage women to report violence and the assessment of those campaigns. She also asked how many centres had been set up for victims of violence and torture and whether an accelerated abortion procedure had been put in place for women whose lives were at risk as a result of pregnancy.

31. She repeated the questions contained in paragraphs 11 and 13 of the list of issues (CAT/C/MKD/Q/3) and asked for additional information on the status of a number of cases of trafficking in persons referred to in paragraph 52 of the State party report (CAT/C/MKD/3). She also asked whether domestic legislation criminalized victims of trafficking in persons and whether training on trafficking in persons included a gender element.

32. The Chairperson, speaking as a member of the Committee, asked what had been done to address the mistreatment of detainees, inter-prisoner violence, poor material conditions, physical abuse of detainees by staff, the lack of a secure environment for special

categories of offender, overcrowding and insufficient health-care provision at Idrizovo prison.

33. He asked whether the planned relocation of the Tetovo Educational and Correctional Institution had taken place and requested information on the outcome of the investigation of a case of the rape of a minor at that establishment. More should be done to ensure that detainees at the Institution had access to education and purposeful daily activities.

34. Facilities used to house irregular migrants were plagued by chronic overcrowding, inter-inmate violence and allegations of ill-treatment by staff. He asked what was being done to improve that situation and why unaccompanied minors were held in custody with adult detainees when the relevant legislation stated that the social services must be contacted, a guardian appointed and the minor referred to an appropriate institution.

35. **Ms. Gaer** asked the delegation for its reaction to the comments on deteriorating conditions at Idrizovo prison contained in paragraph 8 of the 2011 report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its visit to the State party. She asked what measures had been taken to improve the management of the prison and staff training.

36. With reference to article 3, she asked whether the recent introduction of the Law Amending and Supplementing the Law on Asylum and Temporary Protection had helped to improve asylum procedures, first instance decisions and the process of determining refugee status. She asked how the term "exceptional cases" was interpreted when deciding which cases would be dealt with under the accelerated procedure and requested statistical data on the number of such cases. She asked what had been done to deter border officials from marking the passports of Roma and ethnic Albanians in order to curtail their movements, how many asylum applications had been received annually since the previous report, how many of those applications had been granted and what the grounds for rejection of applicants had been.

37. She asked whether it was true that, in 2012, out of 638 applications for asylum in the State party, none had been granted, how many asylum applications had been granted in the interim, what steps had been taken to ensure documentation was provided to asylum seekers and how access to asylum procedures and a fair, individual assessment of asylum applications were ensured.

38. She asked whether gender-sensitive measures had been adopted as a part of asylum procedures and requested data for the reporting period and for 2013 and 2014 on the total number of asylum applications and successful applications, as well as on illegal border crossings. She asked why the number of applicants for asylum had increased dramatically in 2012 and whether that trend had continued.

39. The Committee required information on the application of domestic legislation on refoulement to ensure that all individual cases were considered and all procedural safeguards were, in practice, provided to the person returned. She asked whether there had been any cases of a person not being returned to a country because of a risk of torture.

40. She asked whether guardians were immediately appointed for unaccompanied minors who had illegally entered the State party and, if so, how many guardianships had been established since the previous report, what the monitoring procedure was relating to such guardians, how long related custody proceedings took and whether such minors had access to interpretation, education and legal aid. She also requested to be provided with statistics in that regard.

41. **Mr. Domah** said that the current dialogue offered an opportunity for the former Yugoslav Republic of Macedonia to reflect on whether it was taking the kind of principled action that would improve conditions within the country. He was concerned that civil

society organizations had been presented with a completed copy of the State party report (CAT/C/MKD/3) but that they had not been consulted during the drafting stage. It was important to acknowledge the positive role of civil society as guide, conscience and helpers to governments in office.

42. Although reform of the judiciary and the creation of new institutions, including an Academy for Training of Judges and Public Prosecutors, had served to improve the efficiency of the justice system, the independence of institutions was still compromised because there was a perception that the judiciary was not independent. A major component of the independence of the judiciary was the independence of the bar, for which it would be essential to introduce independent training of lawyers. The independence of institutions such as the Public Prosecutor's Office and the Ombudsman should also be guaranteed.

43. The State party report showed a number of measures that had been taken with respect to the rule of law but they seemed to stay within the realm of exhortation; there was very little to show that criminal, civil and administrative sanctions had been taken to deter the continuing commission of unlawful practices within the purview of the Convention. Not taking appropriate sanctions created a sub-culture, which defeated the purpose for which the laws had been passed. There appeared to have been very few cases where criminal proceedings had been instituted against several persons in cases where that would have been warranted.

44. **Ms. Gaer** (Country Rapporteur) recalled the Committee's request in paragraph 20 of the list of issues prior to the submission of the State party's third periodic report (CAT/C/MKD/Q/3) concerning the abolition of the "double criminality requirement for the crime of torture" and asked whether the principles referred to by the State party in response in paragraphs 88 to 93 of its report (CAT/C/MKD/3) had ever been applied.

45. In paragraph 38 (a) of the list of issues, the Committee had requested the State party to indicate what measures had been taken "to ensure that truncheons were removed from the premises of the Educational-Correctional Institution"; she wished to know whether statistics were available to demonstrate that the issue of truncheon use had been addressed.

46. Concerning the request for information on measures taken to strengthen the judiciary in paragraph 43 of the list of issues, the Ombudsman had stated that an analysis of data from casework showed that current reforms of the justice system were still not sufficient to ensure "protection of constitutional and legal rights". Non-governmental organizations had noted that the introduction of the new law on criminal procedure had been delayed; she wished to know whether it had been implemented and what other action had been taken to promote communication among the judiciary and to minimize delays in court proceedings.

47. With respect to protection of the LGBT community, she noted that, on 22 June 2013, more than 30 people were said to have attacked an LGBT support centre, where about 40 people had been watching a film: slogans had been shouted and stones and bottles had been thrown; one of the organizers had even received death threats. On 5 July 2013 there had been an attempted arson attack on the centre. She asked what action had been taken to conduct an investigation and to identify the attackers.

48. **The Chairperson** reminded members of the Committee that due care should be taken not to use abbreviations but to refer to the formal names of States parties in full and to use the formal name of "the former Yugoslav Republic of Macedonia" in all references made to that country.

The public part of the meeting rose at noon.